

REMARKS:

Examiner Sperty is thanked for the courtesy of discussing this application during telephone interviews on November 9 and 10, 2005. Reconsideration of the application is requested in light of the amendments and remarks herein. Applicant has canceled claims 1-88 and 90. Claims 89, 93, 94, 96 and 97 have been amended in clarification. New claims 98-122 have been added. No new matter has been added.

Claim 97 was rejected as being indefinite under 35 U.S.C. §112, second paragraph. Applicant has amended claim 97 to provide that each of the openings is configured as a slit, and submits that this rejection has been overcome.

Claims 89-97 were rejected as being anticipated by Walters. Independent claim 89 has been amended in light of the telephone interviews with Examiner Sperty. Specifically, claim 89 now provides that the tying element is tied around an ornamental item. Claim 89 also includes a fastener system having first and second components of hook and loop fasteners. In addition, a substantially planar, semi-rigid backer is provided in claim 89, which has opposed first and second major surfaces, and at least first and second spaced openings extending therethrough. Walters fails to disclose or suggest a backer as claimed by Applicant.

Applicant respectfully submits that element 16 of the Walters invention is not a substantially planar, semi-rigid backer. Rather, element 16 is disclosed as “a plurality of wire portions 16 of hook and loop fabric fastening material”. See ‘250 patent, column 3, lines 55-56. Thus, element 16 appears to be analogous to the first surface of the first component of the hook and loop fastener claimed by Applicant. It is not a separate element, as in the claimed invention. Anticipation under Section 102(b) requires that a

prior art reference disclose every claim element of the claimed invention. *E.g.*, *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1574, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986). The absence of any element of the claim from the cited reference negates anticipation. *E.g.*, *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 U.S.P.Q. 1264 (Fed. Cir. 1984). As such, Applicant submits that Walters cannot be said to anticipate the claimed invention given it fails to include the backer element of Applicant's claimed invention.

New claims 101-107 are specifically directed to the barrette as the ornamental item. As such, claim 94 has been amended accordingly. New claims 108-118 are directed to an coupling apparatus having an elastic band as opposed to the tying element of claim 89. Such claims were discussed during previous telephone interviews, at which time the undersigned indicated that an elastic band may be used instead of a tying element. Note that the fastener is further defined in dependent claims 109 and 110.

New claims 119-122 are directed to a coupling apparatus having the tying element, but also including a fastener selected from the group consisting of an interlocking fastener and an adhesive strip.

The undersigned appreciates that Walters has not be cited against these newly added claims, but notes that all of the new claims include a backer. As such, Walters also fails to anticipate the new claims for the reasons set forth above.

Applicant respectfully submits that all claims are now in condition for allowance, and earnestly solicits same. However, should additional clarification be required, the Examiner is invited to contact the undersigned.

Applicant submits herewith a Request for an Extension of Time for one month, along with the requisite fees. It is believed that no other fees are due with this submission. Should that determination be incorrect, then please debit Account No. 50-0548 and notify the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Schrot', with a stylized flourish at the end.

William C. Schrot
Registration No. 48,447
Attorney for Applicant

Berenato, White & Stavish, LLC
6550 Rock Spring Drive, Ste. 240
Bethesda, Maryland 20817
Telephone: (301) 896-0600
Facsimile: (301) 896-0607